

***Testimony of Jay Erickson
Montana Land Reliance
HB 249 – House Taxation Committee
January 22, 2009***

Mr. Chairman members of the Committee, my name is Jay Erickson, and I am a Managing Director for the Montana Land Reliance, a non-profit whose focus is private land conservation and preservation of Montana's open space and its agricultural heritage.

The Montana Land Reliance opposes HB 249.

This bill provides a new tax on conservation easements.

1.4% of Montana's 93 million acres will not be developed into strip malls and Walmarts as this land is held subject to conservation easements. The Montana Land Reliance has been in business for 30 years and holds roughly one-half of Montana's open space conserved by conservation easements. The owners of these ranch and farm lands continue to pay 100% of the real property taxes as if no conservation easement were in place. Under HB 249 non-profits such as the Montana Land Reliance will be levied a new duplicative property tax on each ranch which has a conservation easement.

Currently, state law MCA 76-6-6(1) provides that a conservation easement cannot reduce a property's assessed value or lower the property's tax classification. In other words, revenues to counties remain the same even though a conservation easement has been placed on the property.

HB 249 levies a new tax in addition to the existing property tax against holders of conservation easements, such as the Montana Land Reliance. This new tax is unfair. It taxes a private property right penalizing a ranch or farm family's choice to remain in agriculture.

The Montana Land Reliance works with private land owners who voluntarily place conservation easements on ranch and farm land to enable future generations to remain in agriculture. Recently, I had the pleasure to work with a five generation Montana ranch family who placed a conservation easement on their beautiful ranch located near Cascade. The conservation easement helped the family transfer ranch ownership to a younger generation significantly reducing exposure to estate tax. The family was also able to conserve financial resources by reducing income taxes and avoiding costly life insurance policies (assuring needed liquid assets to pay estate tax). Most importantly, the family elders were assured that the ranch would remain in agriculture.

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***Testimony of Jay Erickson
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Page 2***

The conservation easement ensures this family's ranch will never be developed. As a result, this property will never need increased government services. HB 249, however, unfairly seeks to assess property tax on more than 100% of market value. This is in direct violation of Montana law MCA Sections 15-6-134 and 15-7-103 which require that real property be assessed at no more the market value and in an equitable in and uniform basis.

HB249 generates a new tax and unfairly taxes the same ranch land twice at more 100% of its taxable value in violation of Montana law.

This bill is unworkable. Conservation easements have no taxable value.

What is a conservation easement? It is a third party right of enforcement. It gives standing to a third party such as the Montana Land Reliance to enforce the terms of a conservation easement.

As the holder of conservation easements, the Montana Land Reliance doesn't have the right to develop, use or enjoy the property. The creation a conservation easement is not a transfer of a valuable right to the Montana Land Reliance but *the choice to remain in agriculture and a transfer of the right to develop or subdivide the family ranch.*

As a result, the fair market value for conservation easements is zero. There is no commercial or secondary market for a conservation easement. On its balance sheet and tax returns, the Montana Land Reliance lists the value of its conservation easements as nil.

MCA 15-8-111(2) provides that taxable value is assessed at 100% of market value. This is determined by comparable sales, cost or capitalization of income. These methods simply cannot be used to determine any value associated with a property right such as a conservation easement.

A conservation easement has no value that can be taxed and Montana law provides no method to value a conservation easement for property tax purposes.

I urge you vote no on new taxes and vote no on a bill that seeks to tax property at more than 100% of taxable value in violation of Montana law and is unworkable under existing property tax law.